

**DECISION**

2011 / MARTIN  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

B-205994.2; B-209501; B-209291; B-208528.2;  
**FILE:** B-209357; B-209432; **DATE:** May 16, 1983  
B-210679; B-211005

**MATTER OF:**

Loyola College and NonPublic Educational  
Services, Inc., a Joint Venture; Johnson  
& Wales College

**DIGEST:**

1. GAO will not object to definitive responsibility requirement in solicitation for basic skills education programs for military trainees, that contractor be accredited educational institution, since the contracting agency's view that the requirement is needed to assure quality instructional programs is reasonable.
2. Joint venture composed of an accredited educational institution and a managing venturer which is not accredited does not meet the solicitation requirement for contractor accreditation, since imputing the accredited firm's status to the joint venture would frustrate the intent of requirement, which is to insure that educational programs are managed by accredited institutions.

Loyola College and NonPublic Educational Services, Inc., a Joint Venture (Loyola/NonPublic), has protested the rejection of a number of its bids and proposals to provide educational services to the Department of the Army. Johnson & Wales College has protested the award of a contract and a potential award to Loyola/NonPublic for similar services. All of these procurements were restricted to regionally or nationally accredited educational institutions in accordance with Army Regulation (AR) 621-5, Paragraph 2-8.d, October 15, 1981. Although Loyola is duly accredited, NonPublic and Loyola/NonPublic are not. In all cases where Loyola/NonPublic is the protester, the Army determined that the joint venture's

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bids and proposals could not be accepted because the accreditation of Loyola could not be transferred to the joint venture by contractual arrangement or affiliation, and that the joint venture thus was not responsible. In the cases where Johnson & Wales is the protester, the Army accepted the joint venture's bid in one instance and, in the other, the joint venture's bid is low and is under consideration. The primary issue in all cases is the propriety of the rejections or acceptances of the bids and proposals of the joint venture. The protests therefore have been combined for purposes of this decision.

We believe Loyola/NonPublic properly has been found nonresponsible. <sup>1</sup>

The protests pertain to both invitations for bids (IFBs) and requests for proposals (RFPs) that solicited bids or offers to provide instruction and related services in connection with Basic Skills Education Programs (BSEP) I and II. The specific procurements are as follows:

1. B-205994.2: RFP No. DAAH03-82-R-0041 issued by Redstone Arsenal.
2. B-209501: RFP No. DABT35-82-R-1023 issued by Fort Dix.

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<sup>1</sup>The Army also contests the validity of the joint venture. Since we believe Loyola/NonPublic properly was found nonresponsible, and thus ineligible for award, we need not consider this issue.

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3. B-209291: RFP No. DABT57-82-R-0056 issued by Fort Story, RFP No. DABT57-82-R-0065 issued by Fort Eustis, and IFB No. DABT10-82-B-0106 issued by Fort Benning. 2
4. B-208528.2: IFB No. DABT31-82-B-0088 issued by Fort Leonard Wood.
5. B-209357: IFB No. DAKF31-82-B-0090 issued by Fort Devens.
6. B-209432: IFB No. DAKF49-82-B-0073 issued by Fort Sam Houston. Loyola/NonPublic was awarded the contract and Johnson & Wales protested. The Army states that award to the joint venture was a mistake and although it does not intend to terminate the contract, it has instructed the procuring agency not to exercise the option to extend performance.
7. B-210679: IFB No. DAKF36-83-B-0004 issued by Fort Drum. Loyola/NonPublic is the apparent low bidder and Johnson & Wales has protested award to any bidder other than itself.
8. B-211005: IFB No. DAKF40-83-B-0030 issued by Fort Bragg. Loyola/NonPublic was the low bidder, and Central Texas College was the second low bidder. The Army, Loyola/NonPublic and Central Texas College have agreed to rely on the records of the other protests for resolution of the protest, without independent development.

The BSEP I provides trainees with basic literacy and computational instruction up to the fifth-grade level, while BSEP II provides instruction up to the ninth-grade level. Additional instruction in BSEP II allows the trainee to acquire knowledge of his military occupational specialty for career enhancement and to obtain a general education diploma.

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2In this series of procurements and in the Fort Devens procurement (listed fifth), the Army submitted the matter of the joint venture's responsibility to the Small Business Administration (SBA) for consideration under its Certificate of Competency (COC) procedures, and in all of those cases the SBA denied the COC on grounds that the joint venture was not a small business.

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Although the precise wording of the requirements differed in minor respects, all solicitations required the contractors to be educational institutions duly accredited by recognized national, regional or state accrediting bodies. The Army considers the requirement a definitive responsibility criterion, that is, a particular capability-related requirement that must be met to be eligible for award. The Army rejected Loyola/NonPublic as nonresponsible because in the agency's view this joint venture, made up of one accredited party and one non-accredited party, does not meet the requirement.

Loyola/NonPublic argues that the accreditation requirement does not bear a reasonable relation to the services to be performed. The joint venture asserts that accredited schools assign few, if any, members of their regular faculties to such contracts and that therefore the Army can expect no greater quality control from them than would be provided by the joint venture, whose instructors allegedly meet all of the requirements specified for instructors with respect to state accreditation and experience. Loyola/NonPublic contends that the accreditation standard thus does nothing to further the Army's goal of developing programs of sufficient quality to satisfy the agency's need for instruction and related services with respect to basic English, reading, writing and speaking skills. The joint venture points out that schools for yacht design, gemology, gun repair, dress making, barbering, etc. have been accredited by some of the accrediting associations recognized by the Army, and thus those schools presumably would be eligible for the contract awards in issue. It also contends that Johnson & Wales, which now performs a number of BSEP contracts, is accredited as a cooking school and as an advanced business school, and has no accreditation in any of the areas of BSEP instruction.

Loyola/NonPublic further argues that Loyola's accreditation should be imputed to the joint venture, and that Loyola/NonPublic thus meets the accreditation requirement.

The Army explains the reason for accreditation requirement prescribed at Paragraph 2-8.d of AR 621-5:

"The Army considers that institutional accreditation is essential in developing instructional programs of sufficient quality to satisfy its minimum needs. Accreditation is a unique feature of US educational practices. It includes voluntary self-evaluation by a school and appraisal by a group of its peers. This process operates through nationally and regionally recognized accrediting agencies and associations. These agencies or associations have established educational criteria to evaluate institutions in terms of their own objectives and to ascertain whether programs of educational quality are being maintained. They provide institutions with continued stimulus for improvement to insure that accredited status may serve as an authentic index of educational quality. Thus, the Army relies on accreditation by those agencies and associations to assure requisite quality."

We held in a previous case that this sort of accreditation requirement is not an unduly restrictive definitive responsibility criterion, since it clearly bears a reasonable relationship to the services to be performed. School For Educational Enrichment, B-199003, October 16, 1980, 80-2 CPD 286. In so holding, we pointed out that the procuring agencies, not our Office, are in the best position to determine their minimum needs and how to accommodate them, and that we therefore will not object to agency determinations in these respects unless they are shown to be unreasonable. We found that the same justification for the accreditation requirement proffered here--the promotion and maintenance of program quality--as well as the minimization of overall educational costs and the enhancement of student achievement, showed that there was a reasonable relation between the accreditation of the contractor and the provision of an effective program of instruction.

Indeed, we believe Loyola/NonPublic overreaches in its listing of accredited schools for yacht design, gemology, gun repair and fashion design as coming within the wording of the accreditation requirement. Loyola/NonPublic has referred to no instance where an inappropriate school has been awarded a teaching contract for

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BSEPs I and II except for Johnson & Wales, which Loyola/NonPublic asserts is accredited only as a cooking school and business school. The record, however, indicates that Johnson & Wales is a 4-year, degree-granting institution of higher learning which has been in existence since 1914 and offers 2-year Associate degrees, 4-year Bachelor degrees and courses in English, reading improvement and mathematics, as well as courses in data processing, accounting, electronics, culinary arts, etc. It is subject to the same periodic evaluations and peer reviews as any other accredited institution.

Accordingly, we find no legal merit in Loyola/NonPublic's contention that the accreditation requirement is unreasonable.

We also find no merit to Loyola/NonPublic's argument that Loyola's accreditation should be imputed to the joint venture.

The Army reports that the intent of the accreditation requirement is to have the accredited institution serve as sole contractor with full responsibility for the program, and asserts that Loyola's participation in the joint venture is far short of that required to assure the quality performance contemplated by the accreditation requirement. The Army suggests that the real purpose of the joint venture is to permit NonPublic to circumvent the accreditation requirement, and that the real offeror was NonPublic.

The Army also has furnished a letter from the Council on Postsecondary Accreditation, which is composed of accrediting bodies. The Council states that institutional accreditation is a status awarded to an institution as a whole, and such accreditation is not transferable by any contractual arrangement or affiliation. The Council further states that any contractual relationship between an accredited institution and a non-accredited institution must provide that the accredited institution exercise sole and direct control, and that engaging another organization to provide direct instructional services "is in most, if not all, regions considered to be a major substantive change, requiring notification to and approval by the appropriate regional commission."

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It is apparent from the records on these protests that the role of Loyola is not one of sole and direct control or one involving ultimate and continuing responsibility for the programs. For example, the agreement between Loyola and NonPublic basically imposes upon Loyola the obligation to approve all instructors, course designs and teaching materials and to make at least two one-day site visits annually. NonPublic is responsible for recruiting and employing all instructors and for all administration and contract management. In addition, while Loyola will receive 20 percent of any profits, NonPublic will be responsible for all losses and will hold Loyola harmless from any liability arising under the agreement.

We have recognized that the resources, capabilities and facilities of one venturer at times may be imputed to the joint venture. In these situations, imputation was compatible with the purposes in issue. For example, in Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31, we held that the low bidder's post-bid opening joint venture agreement with another party in order to secure additional resources should not have been ignored in judging the low bidder's general responsibility, that is, the firms' ability to perform. See also 50 Comp. Gen. 530 (1971); 39 Comp. Gen. 468 (1959); G&C Enterprises, Inc., B-186748, March 2, 1977, 77-1 CPD 155.

We do not believe, however, that the imputation of one venturer's status to the joint venture is appropriate where imputation would frustrate the requirement for the status. Thus, for example, while a small business firm may subcontract with a large business a portion of a contract that was set aside for small business without endangering its eligibility, it cannot transfer or impute its small business status to a joint venture composed of itself and a large business for purposes of competing for set-asides. See 50 Comp. Gen., supra.

Here, imputing Loyola's accreditation to the joint venture clearly would not enhance the resources, capabilities and facilities of the contractor in a manner


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compatible with the purposes of the accreditation requirement. The Army imposed the requirement to improve the quality of its training and its acceptance by the trainees, essentially by having its training programs directly controlled by accredited institutions. Acceptance of the bids and offers of the joint venture, whose managing venturer is not accredited, would frustrate the Army's intent, and would leave the agency essentially in the same position as it would be without the requirement.

Accordingly, we agree with the Army that Loyola/NonPublic does not meet the accreditation requirement.

Loyola/NonPublic's protests against the rejection of its bids and proposals therefore are denied. Johnson & Wales' recent protest (Fort Drum), where award has not yet been made, is sustained. We assume that the Army will direct the procuring agency to act in accordance with the conclusions reached in this decision. We also sustain Johnson & Wales' protest against the award to Loyola/NonPublic under the Fort Sam Houston invitation. We note, however, that the record shows that termination of the contract is not practicable, and that the Army will not exercise the options in Loyola/NonPublic's contract.

Under the circumstances, therefore, no further action by our Office is necessary.

for   
Comptroller General  
of the United States